IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23595 of 2004

Between:

Fribzi Datta Sri Constructions Pvt., Ltd., rep.by its Director Sri Manchala Ravindra,
Flat No.204, S.V.'s Meera Mansion, 7-1-79, Dharam Karam Road,
Ameerpet, Hyderabad.

..... PETITIONER

AND

The Director General of Fire Services, Andhra Pradesh, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ / Direction or order preferably a writ in the nature of writ of Mandamus, declaring the action of the respondent in refusing to refund the amount of Rs.91,732/- vide Respondent's Letter No.RC.No.7747/B1/2003, dated 04-06-2004 as illegal and consequently direct the Respondent to pay the sum of Rs.91,732/- with interest @ 18% p.a. from the date of deposit till repayment of the same to the petitioner along with costs of this petition and pass such other order or orders.

Counsel for the Petitioner:MR.A.SRINATH

Counsel for the Respondent No.: GP FOR HOME

The Court at the stage of admission made the following ORDER:

Petitioner intended to construct a multi-storied building complex in the premises bearing No.8-3-676 and 8-3-676/1/A of Yellareddyguda, Hyderabad. For that purpose, it submitted an application before the Municipal Corporation of Hyderabad. In accordance with the provisions of the Multi-storied Building Regulations, 1981 (for short 'the Regulations'), it also submitted an application to the respondent for issuance of 'No Objection Certificate' ('NOC'). A sum of Rs.91,732/- was paid as Fire Precaution Fund for obtaining the 'NOC'.

The respondent addressed a letter dated 21.10.2003 to the Municipal Corporation of Hyderabad stating, *inter alia*, that on completion of the building and before occupation, the petitioner should intimate him for inspection and a 'NOC' would be issued thereafter. It is stated that the Municipal Corporation rejected the application submitted by the petitioner and in that view of the matter the necessity to obtain any 'NOC' from the respondent did not subsist. It submitted a report dated 20.05.2004 seeking refund of the Fire Precaution Fund paid by it. Through order dated 04.06.2004, the respondent refused to refund the same saying that the request is made at a belated stage. Hence, this writ petition.

Heard learned counsel for the petitioner and learned Government Pleader for Home.

The petitioner submitted an application to the respondent for issuance of a 'NOC', as required under the Regulations. A sum of Rs.91,732/- was paid as

Fire Precaution Fund. The application was processed by the respondent and he intimated the Commissioner, Municipal Corporation of Hyderabad, through proceedings dated 21.10.2003 that 'NOC' would be issued to the petitioner after completion of the building and before occupation. From this, it is evident that the 'NOC' was to have been issued by the respondent only after the construction of the building is completed. The construction, in turn, could have been undertaken only if it was permitted by the Municipal Corporation.

The petitioner states that the Municipal Corporation rejected the application for sanction of proposed construction and thereby it did not construct the building. Once it is evident that the building was not constructed, the necessity for issuance of the 'NOC' by the respondent did not subsist. The payment of fee by the petitioner was to provide the necessary fire service in the event of any mishap occurring in the building that was proposed to be constructed. When the building itself did not ensue and exist, the question of the respondent requiring to render any service to the same, does not arise. At any rate, the 'NOC' was not issued to the petitioner. It should not be forgotten that the respondent is not undertaking any trade or business. Strictly speaking, the services to be provided by him are as part of the social obligation of the State. All the same, he may be entitled to collect the fee for rendering any specialized service to multi-storied buildings. When the building did not come up or exist, there does not exist any justification for the respondent to withhold that amount.

For the foregoing reasons, the writ petition is allowed and the respondent is directed to refund the amount of Rs.91,732/- paid by the petitioner towards Fire Precaution Fund within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

30.12.2004

ksld

To

1. The Director General of Fire Services, Andhra Pradesh, Hyderabad.
2. Two CCs. to the G.P. for Home, High Court of A.P., Hyderabad(OUT)
3. Two CD copies.